

**40 CFR Part 70**

[AL01; FRL-5295-5]

**Clean Air Act Proposed Interim Approval of Operating Permits Program; Alabama Department of Environmental Management, Jefferson County Department of Health, and the City of Huntsville Department of Natural Resources and Environmental Management****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed interim approval.

**SUMMARY:** The EPA proposes source category-limited interim approval of the State of Alabama Department of Environmental Management (ADEM) and the Jefferson County Department of Health (JCDH) operating permits programs. The EPA also proposes interim approval of the City of Huntsville Department of Natural Resources and Environmental Management (City of Huntsville) operating permits program. These proposed approvals are for the purpose of complying with Federal requirements which mandate that States develop and submit to EPA programs for issuing operating permits to all major stationary sources and to certain other sources.

**DATES:** Comments on this proposed action must be received in writing by October 13, 1995.

**ADDRESSES:** Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at EPA Region 4 Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

**FOR FURTHER INFORMATION CONTACT:** Joel Huey, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NE, Atlanta, Georgia 30365, (404) 347-3555, Ext. 4170.

**SUPPLEMENTARY INFORMATION:****I. Background and Purpose****A. Introduction**

As required under title V of the Clean Air Act Amendments (sections 501-507 of the Clean Air Act ("the Act")), EPA

has promulgated rules that define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the State's submission is materially changed during the one-year review period, 40 CFR Part 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional material. The EPA received title V operating permits program submittals from the ADEM, JCDH, and City of Huntsville on December 15, 1993; December 14, 1993; and November 15, 1993, respectively. The ADEM provided EPA with additional material in supplemental submittals dated March 3, 1994; March 18, 1994; June 5, 1995; July 14, 1995; and August 28, 1995. The JCDH and City of Huntsville provided EPA with additional material in supplemental submittals dated July 14, 1995, and July 20, 1995, respectively. Because these supplements materially changed the title V program submittals, EPA has extended the review period and will work expeditiously to promulgate a final decision on all programs.

The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. Where a State requests source category-limited interim approval and demonstrates compelling reasons in support thereof, EPA may also grant such an interim approval. If EPA has not fully approved a program by two years after November 15, 1993, or by the end of an interim program, it must establish and implement a Federal program.

**B. Federal Oversight and Sanctions**

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval

period, the ADEM, JCDH, and City of Huntsville would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the ADEM, JCDH, and City of Huntsville. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval.

Following final interim approval, if the ADEM, JCDH, or City of Huntsville failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the ADEM, JCDH, or City of Huntsville then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that a complete corrective program had been submitted. Moreover, if the Administrator found a lack of good faith on the part of the ADEM, JCDH, or City of Huntsville, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the department had come into compliance. In any case, if, six months after application of the first sanction, the ADEM, JCDH, or City of Huntsville still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove the ADEM, JCDH, or City of Huntsville's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the ADEM, JCDH, or City of Huntsville had submitted a revised program, and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the ADEM, JCDH, or City of Huntsville, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the department had come into compliance. In all cases, if, six months after EPA applied the first sanction, the ADEM, JCDH, or City of Huntsville had not submitted a revised program that EPA had determined corrected the

deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if the ADEM, JCDH, or City of Huntsville has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to the ADEM, JCDH, or City of Huntsville's program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer, and enforce a Federal permits program for the ADEM, JCDH, or City of Huntsville upon interim approval expiration.

## II. Proposed Action and Implications

### A. Analysis of State Submission

The EPA has concluded that the operating permits programs submitted by the ADEM, JCDH, and City of Huntsville substantially meet the requirements of title V and part 70, and proposes to grant interim approval to the programs. For detailed information on the analysis of the State's submission, please refer to the Technical Support Document (TSD) contained in the docket at the address noted above.

#### 1. Support Materials

Pursuant to section 502(d) of the Clean Air Act as amended (1990 Amendments), the Governor of each State must develop and submit to the Administrator an operating permits program under State or Local law or under an interstate compact meeting the requirements of title V of the Act. The ADEM, JCDH, and City of Huntsville requested, under the signature of James W. Warr, Director of the ADEM and governor's designee, interim approval to administer the State and Locals operating permits program submittals in all areas of the State of Alabama with the exception of Indian reservations and tribal lands. The ADEM and JCDH also requested source category-limited interim approval.

The ADEM, JCDH, and City of Huntsville operating permits program submittals do not assert jurisdiction over Indian lands or reservations for purposes of 40 CFR part 70 and title V. The EPA will, at a future date, conduct a Federal title V operating permits program governing title V sources of air emissions on Indian lands and reservations in Alabama.

The ADEM submittal, provided as Section 1—"Complete Program Description," addresses 40 CFR

70.4(b)(1) by describing how the ADEM intends to carry out its responsibilities under the part 70 regulations. The JCDH and City of Huntsville submittals also provided descriptions of how they intend to carry out their responsibilities under the part 70 regulations. They are included in Section 1 of the JCDH submittal and Section 2 of the City of Huntsville submittal. The program descriptions have been deemed to be appropriate for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the attorney general (or the attorney for the State air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The ADEM, JCDH, and City of Huntsville have submitted legal opinions showing adequate legal authority as required by Federal law and regulation. However, their legal opinions also state that the ADEM, JCDH, and City of Huntsville do not have adequate criminal authority as required by 40 CFR 70.11(a)(3)(ii)-(iii). This lack of criminal authority precludes the ADEM, JCDH, and City of Huntsville from obtaining full approval of their title V programs.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms and relevant guidance to assist in the implementation of the permit program. Section 2 of the ADEM submittal, Attachment I of the JCDH submittal, and Section 8 of the City of Huntsville submittal include the permit application forms. The permit application forms meet the requirements of 40 CFR 70.5(c).

#### 2. Regulations and Program Implementation

The ADEM submitted Regulation 335-3-16 ("Major Source Operating Permit") and Regulation 335-1-7 ("Air Division Operating Permit Fees") for implementing the State part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was included in Sections 3 and 4 of the ADEM submittal. The JCDH submitted Chapter 18 ("Major Source Operating Permits") and Chapter 16 ("Operating Permit Fees") of the Air Pollution Control Rules and Regulations for implementing their part 70 program. Sufficient evidence of their procedurally correct adoption was included in Attachment 3 of the JCDH submittal. The City of Huntsville submitted Regulations 3.1 ("General Provisions"),

3.6 ("Permit Application Fees"), 3.7 ("Major Source Operating Permit Annual Emissions Fees"), and 3.9 ("Major Source Operating Permit") of the Air Pollution Control Rules and Regulations for implementing their part 70 program. Sufficient evidence of their procedurally correct adoption was included in Section 4 of the City of Huntsville's submittal. Copies of all applicable State/Local statutes and regulations that authorize the part 70 program, including those governing State/Local administrative procedures, were included with the submittals.

The following requirements, set out in EPA's part 70 operating permits program review, are addressed in Section 3 of the ADEM submittal: (A) Applicability requirements, [40 CFR 70.3(a)]: 335-3-16-.03; (B) Permit application requirements, [40 CFR 70.5]: 335-3-16-.04; (C) Provisions for permit content, [40 CFR 70.6]: standard permit requirements: 335-3-16-.05(1); permit duration: 335-3-16-.05(2); monitoring and related recordkeeping and reporting requirements: 335-3-16-.05(3); compliance requirements: 335-3-16-.06 and .07; (D) Provisions for permit issuance, renewals, reopenings and revisions, [40 CFR 70.7]: 335-3-16-.12 and 335-3-16-.13; and (E) Permit review by EPA and affected State, including public participation [40 CFR 70.6]: 335-3-16-.15.

The following requirements, set out in EPA's part 70 operating permits program review, are addressed in Attachment 3 of the JCDH submittal: (A) Applicability requirements, [40 CFR 70.3(a)]: Regulation 18.3; (B) Permit application requirements, [40 CFR 70.5]: Regulation 18.4; (C) Provisions for permit content, [40 CFR 70.6]: standard permit requirements: Regulation 18.5.1; permit duration: Regulation 18.5.2; monitoring and related recordkeeping and reporting requirements: Regulation 18.5.3; compliance requirements: Regulations 18.7 and 18.7; (D) Provisions for permit issuance, renewals, reopenings and revisions, [40 CFR 70.7]: Regulations 18.12 and 18.13; and (E) Permit review by EPA and affected State, including public participation [40 CFR 70.6]: Regulation 18.14.

The following requirements, set out in EPA's part 70 operating permits program review, are addressed in Section 4 of the City of Huntsville submittal: (A) Applicability requirements, [40 CFR 70.3(a)]: Regulation 3.9.1; (B) Permit application requirements, [40 CFR 70.5]: Regulation 3.9.2; (C) Provisions for permit content, [40 CFR 70.6]: standard permit requirements: Regulation 3.9.5(a);

permit duration: Regulation 3.9.5(b); monitoring and related recordkeeping and reporting requirements: Regulations 3.9.5(c), 3.9.5(d) and 3.9.5(e); compliance requirements: Regulations 3.9.6 and 3.9.7; (D) Provisions for permit issuance, renewals, reopenings and revisions, [40 CFR 70.7]; Regulations 3.9.10 and 3.9.11; and (E) Permit review by EPA and affected State, including public participation [40 CFR 70.6]; Regulation 3.9.13.

Alabama statutes 22-22A-5(18) and (19) provide civil enforcement authority consistent with 40 CFR 70.11, including authority to recover penalties and fines in a maximum amount of not less than \$10,000 per day per violation. However, current statutes do not provide adequate authority to assess monetary criminal penalties as required by the Act. Section 70.11(a)(3) (ii) and (iii) require criminal fines recoverable against any person who knowingly violates any applicable requirement, any permit condition, or any fee or filing requirement; knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit; or who knowingly renders inaccurate any required monitoring device or method. These fines shall be recoverable in a maximum amount of not less than \$10,000 per day per violation. Section 22-28-22(d) of the Alabama Air Pollution Control Act provides that any person who knowingly violates or fails or refuses to obey or comply with that chapter or who knowingly submits any false information under that chapter shall be guilty of a misdemeanor and, upon conviction, may be sentenced to hard labor for not more than a year. To receive full program approval, the State of Alabama must amend its state law to provide for adequate criminal fines consistent with 40 CFR 70.11.

The ADEM title V program will implement a two-step process for application completeness, first determining an application to be administratively complete, then requiring application updates as needed to support draft permit preparation. The ADEM has committed in a letter to EPA dated August 28, 1995, to requiring initial applications that: (1) define the part 70 applicable requirements and major/minor source status, (2) certify compliance status with respect to all applicable requirements, (3) allow the permitting authority to determine the approved permit issuance schedule, and (4) include certifications of application truth, accuracy, and completeness. The EPA notes that this type of flexibility is appropriate and has outlined guidance in section II.D. of the July 25, 1995,

White Paper for Streamlined Development of Part 70 Permit Applications. The JCDH and City of Huntsville programs require all title V sources to submit complete applications within 12 months of interim approval.

Section 70.5(d) requires that any application form, report, or compliance certification submitted pursuant to the title V regulations shall contain a certification by a responsible official that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. ADEM Regulation 335-3-16-.04(9)(a) (JCDH Regulation 18.4.9(a) and City of Huntsville Regulation 3.9.4(a)) satisfies this requirement. ADEM Regulation 335-3-16-.04(9)(b) (JCDH Regulation 18.4.9(b) and City of Huntsville Regulation 3.9.4(b)) adds the following condition: "Certification for completeness shall not be required for initial applications that will not be processed in the first year the regulations in this chapter are effective." Since applications will be received from all sources by the end of the first year following program approval, and these applications will meet the requirements listed above, ADEM Regulation 335-3-16-.04(9)(b) (JCDH Regulation 18.4.9(b) and City of Huntsville Regulation 3.9.4(b)) must be deleted from the State's regulations.

The ADEM and JCDH define "insignificant activity" as any air emission or air emissions unit at a plant that has the potential to emit less than 5 tons per year of any criteria pollutant or less than 1,000 pounds per year of any hazardous air pollutant (HAP). The City of Huntsville's program defines "insignificant activity" as any air emission or air emissions unit at a plant that the Director has determined to be insignificant and has been included by the Director on a list of insignificant emission levels or insignificant emissions units. All three programs require that insignificant activities be listed in the permit application forms. The programs also define "trivial activity" as any air emission from a unit that is considered inconsequential, as determined by the Director/Health Officer, and do not require that trivial activities be listed in the permit application forms. To obtain full approval, the program regulations must clarify that emissions thresholds for individual activities or units that are exempted will not exceed the lesser of 1,000 pounds per year or section 112(g) de minimis levels for HAPs. The State may, however, set higher levels of emissions thresholds upon

demonstration that the higher levels are insignificant.

The ADEM, JCDH, and City of Huntsville programs provide that the Director/Health Officer will maintain a list of air emissions or air emissions units that are considered to be insignificant activities and a list of air emissions units or changes in air emissions that have been determined to be trivial. The ADEM, JCDH, and City of Huntsville programs do not include the list of insignificant activities as part of their regulations nor do they require review and approval of them by EPA. Section 70.5(c) states that EPA may approve, as part of a State program, a list of insignificant activities and emissions levels which need not be included in the permit applications. Under part 70, a State must request and EPA may approve as part of that State's program any activity or emission level that the State wishes to consider insignificant. To obtain full approval the State and the local agencies must revise their approach on insignificant activities such that the list is made available for EPA and public review and comment each time the list is revised.

The ADEM, JCDH, and City of Huntsville programs also lack assurance that insignificant activities will not be exempted from title V permitting requirements or excluded from major source applicability determinations. Section 70.5(c) states that a part 70 permit application "may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule approved \* \* \*" To obtain full approval, the State and the Local agencies must revise their regulations consistent with section 70.5(c) to ensure that emissions units with applicable requirements will not be exempted from title V permitting requirements or major source applicability determinations, even if listed on an approved list of insignificant activities.

Sections 70.4(b)(3)(iii) and 70.6(a)(2) state that operating permits programs must issue permits for a fixed term of five years in the case of permits with acid rain provisions and issue all other permits for a period not to exceed five years, except for permits issued for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act. ADEM Regulation 335-3-16-.05(2)(c) (JCDH Regulation 18.5.2(c) and City of Huntsville Regulation 3.9.5(b)(3)) states: "Permits which are issued for new emission units before the unit becomes operational shall be effective for five years after operation of the unit

commences." The EPA interprets this provision to mean that facilities may be issued "merged" new source review (NSR)-operating permits such that an operating permit has a future effective date, and the expiration date would be five years from the effective date. Operating permits would not be issued with a term longer than five years (except for the case of solid waste incineration units). A "merged" NSR-operating permit is not a title V permit until the source commences operation. Also, the title V permit will not become effective if new requirements become applicable to the source (or if other factors change that would render the operating permit invalid) until the permit is revised to reflect these changes.

The ADEM, JCDH, and City of Huntsville rules provide for operational flexibility in accordance with 40 CFR 70.4(b)(12)(i). However, the following provisions regarding trading of emissions under a Federally enforceable emissions cap are not provided for:

(a) The program shall require the permitting authority, if a permit applicant requests it, to issue permits that contain terms and conditions, including all standard permit requirements and compliance requirements, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a Federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. [See 40 CFR Part 70.4(b)(12)(iii)]

(b) The permit application shall include additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source or to define permit terms and conditions for the trading of emissions increases and decreases in the permitted facility. [See 40 CFR Part 70.5(c)(7)]

(c) The permit shall include terms and conditions, if the permit applicant requests them, for the trading of emission increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case by case approval of each emissions trade. [See 40 CFR Part 70.6(a)(10)]

As a prerequisite for full program approval, the ADEM, JCDH, and City of Huntsville regulations must rectify this lack of flexibility on emissions trading procedures. However, EPA notes that the flexibility provisions of 40 CFR part 70 are under revision due to litigation on the rule. The EPA will allow the

State/local programs to make these changes according to the revisions to part 70 when published in order to avoid duplicative rulemaking.

ADEM Regulation 335-3-16-.04(b)(3) (JCDH Regulation 18.4.8(c)(3) and City of Huntsville Regulation 3.9.3(c)(3)) states that the permit application shall include "emission rates of all pollutants in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, or alternative method approved by the Department's Director." The State cannot be granted authority to approve alternatives to standard reference test methods that are specified by applicable requirements. Performance tests shall be conducted in accordance with the procedures set forth in 40 CFR Parts 60, 61 and 63 unless alternate methods or procedures are approved by the EPA Administrator. Although the Administrator retains the exclusive right to approve equivalent or alternate test methods as specified in 40 CFR 60.8(b)(2) and (3), 61.13(h)(1)(ii), and 63.7(e)(2)(ii), the State may approve minor changes in methodology provided these changes are reported to EPA. While this is not a change to current practice, full program approval of the ADEM, JCDH, and City of Huntsville Rules will require deletion of the Department Director's discretion in approving alternatives to standard reference test methods.

ADEM Regulation 335-3-16-.13(4) (JCDH Regulation 18.13.4 and City of Huntsville Regulation 3.9.11(d)) requires that significant modifications be incorporated into operating permits by the same procedures required for an initial permit application, including public participation, review by affected States, and review by EPA. The rule also defines significant modifications as changes that result in a net emissions increase of any of the pollutants and levels listed in ADEM Regulation 335-3-14-.04 or .05, or any modifications under NSPS or NESHAP. This definition of significant modifications is deficient in that 40 CFR section 70.7(e)(4)(i) requires, at a minimum, the State program to consider significant modifications to include every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions. As a prerequisite for full program approval, the ADEM, JCDH, and City of Huntsville Rules must be revised to make this clarification to its definition of significant modifications. However, EPA notes that the permit revision requirements of 40 CFR part 70

are under revision due to litigation on the rule. The EPA will allow the State/local programs to make these changes according to the revisions to part 70 when published in order to avoid duplicative rulemaking.

ADEM Regulation 335-3-16-.13(1) (JCDH Regulation 18.13.1 and City of Huntsville Regulation 3.9.11(a)) contains the requirements of 40 CFR 70.7(d) for administrative amendments, but does not require the Administrator's approval for similar changes allowed by this chapter. This is inconsistent with 40 CFR 70.7(d)(1)(vi) which requires that, in order for changes other than those specified in 40 CFR 70.7(d)(i) through (v) to be made as administrative amendments, they must first be determined by the Administrator, as part of the approved part 70 program, to be similar to those specified in 70.7(d)(1) (i) through (iv). For full approval, ADEM Regulation 335-3-16-.13(1)(a)7 (JCDH Regulation 18.13.1(a)(7) and City of Huntsville Regulation 3.9.11(a)(1)(vii)) must be revised to specifically list the types of changes that the State proposes to be eligible for processing as administrative amendments, thus obtaining the Administrator's approval of such changes as part of the State's part 70 program.

ADEM Regulation 335-3-16-.13(1)(a)6 states that an administrative permit amendment is a permit revision that "incorporates into a permit issued under this chapter the requirements from preconstruction review permits authorized under this Administrative Code, provided that the process used meets procedural requirements substantially equivalent to the requirements of ADEM Admin. Code r. 335-3-16-.12 and 335-3-16-.14 of this chapter \* \* \*." This rule lacks the requirement of 40 CFR 70.7(d)(1)(v) for permit review by EPA and affected states. For full program approval, ADEM Regulation 335-3-16-.13(1)(a)6 must be revised to include the required EPA and affected states review provisions.

The Alabama Air Pollution Control Act, section 22-28-13, provides the ADEM, JCDH, and City of Huntsville with authority to grant individual variances beyond the limitations prescribed in the Alabama Air Pollution Control Act. This authority is exercised whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement, or order of the commission would impose serious hardship without equal or greater benefits to the public and that the emissions occurring, or proposed to occur, do not endanger or tend to endanger human health or safety,

human comfort, or aesthetic values. The EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. The EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements in which it is based."

The complete program descriptions submitted by the ADEM, JCDH, and City of Huntsville and the Technical Support Documents (TSDs) for each program are available for review of more detailed information. The TSDs contain detailed analysis of the programs and describe the manner in which the programs meet all of the operating permit program requirements of 40 CFR part 70.

### 3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed \$25 per ton per year, consumer price index (CPI) adjusted from 1989. The \$25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum."

The ADEM and JCDH have adopted the "presumptive minimum" of \$25 per ton (annually adjusted by the CPI), for each regulated pollutant except carbon monoxide. Also, fees will be assessed on

the first 4,000 tons per regulated pollutant per facility. The City of Huntsville has also adopted the \$25 per ton (annually adjusted by the CPI). In addition to the emissions-based fees, the City of Huntsville will collect permit application fees. Permit application fees from title V sources, as described in Section 3.6 of the City of Huntsville's rules, will be used to support the title V program.

The ADEM and JCDH have also collected early title V fees in 1992, 1993 and 1994, to develop and start the title V program. Facilities under the ADEM and JCDH that paid these initial ramp-up fees will be given credit on the amount owed during 1995–1999 until the total credit allowed equals the sum of the amount paid in 1992, 1993, and 1994. The ADEM and JCDH have demonstrated that the fees collected during 1995–1999 minus the ramp-up fee credits are sufficient to cover the costs of the program. The City of Huntsville has also demonstrated that the fees collected will be sufficient to cover the cost of the program.

The ADEM, JCDH, and City of Huntsville submittals have included an initial accounting and description of how required fee revenues are used solely to cover the title V program. The EPA has determined that their fee demonstrations are adequate and meet the requirements of 40 CFR 70.9.

### 4. Provisions Implementing the Requirements of Other Titles of the Act

#### a. Authority and/or Commitments for Section 112 Implementation

The ADEM, JCDH, and City of Huntsville have demonstrated in their title V program submittals broad legal authority to incorporate into permits and enforce all applicable requirements; however, they have also indicated that additional regulatory authority may be necessary to carry out specific section 112 activities. They have therefore supplemented their broad legal authority with a commitment to implement any section 112 regulations promulgated by EPA that are Federally mandated by the Clean Air Act Amendments of 1990. The EPA has determined that this commitment, in conjunction with the State/Local broad statutory authority, adequately assures compliance with all section 112 requirements. The EPA regards this commitment as an acknowledgment by the ADEM, JCDH, and City of Huntsville of their obligation to obtain further regulatory authority as needed to issue permits that assure compliance with section 112 applicable requirements. This commitment does not substitute for

compliance with part 70 requirements that must be met at the time of program approval.

The EPA interprets the above legal authority and commitment to mean that the ADEM, JCDH, and City of Huntsville are able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Documents accompanying this proposed interim approval.

#### b. Implementation of Section 112(g) Upon Program Approval

The EPA issued an interpretive notice (60 FR 8333) on February 14, 1995, which outlines a revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a Federal rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice explains that EPA is considering whether or not to delay the effective date of section 112(g) beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless EPA provides for such an additional postponement of section 112(g), the ADEM, JCDH, and City of Huntsville must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of State regulations implementing the rule.

The EPA is aware that the ADEM, JCDH, and City of Huntsville lack a program designed specifically to implement section 112(g). However, the ADEM, JCDH, and City of Huntsville do have preconstruction review programs within their permit rules that can serve as adequate implementation vehicles during the transition period. These programs would allow the ADEM, JCDH, and City of Huntsville to select control measures that would meet the maximum available control technology (MACT) standards, as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit. The EPA proposes to approve the use of the ADEM, JCDH, and City of Huntsville preconstruction review programs, under the authority of title V and part 70, for the purpose of implementing section 112(g) to the extent necessary during the transition period between section 112(g) promulgation and adoption of State/

Local rules implementing EPA's section 112(g) regulations. These programs are found in Chapter 335-3-14 of the ADEM Regulations, Chapter 2 of the JCDH Regulations, and Chapter 3.5 of the City of Huntsville Regulations. Although section 112(l) provides authority for approval of State air regulations that specifically implement section 112(g), the direct linkage between the implementation of section 112(g) and title V provide for this limited approval by way of the preconstruction review programs already in place.

The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purpose of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the State to adopt regulations consistent with the Federal requirements.

#### c. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provisions Subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) and part 70 require that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of future section 112 standards and programs that are unchanged from the Federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 for part 70 and non-part 70 sources.<sup>1</sup> The ADEM, JCDH, and City of

Huntsville have informed EPA that they intend to accept delegation of section 112 standards and infrastructure programs through adoption by reference. The details regarding the use of these delegation mechanisms are set forth in a letter dated June 8, 1995, submitted by the ADEM as a title V program addendum.

#### d. Commitment To Implement Title IV of the Act

The ADEM has committed to implement any Acid Rain regulations, following promulgation by EPA of regulations implementing sections 407 and 410 of the Clean Air Act, that are Federally mandated by the Clean Air Act Amendments of 1990 through title IV. The ADEM has proposed revisions to the ADEM Administrative Code that will incorporate 40 CFR Part 72 and Appendices by reference. The State has committed to finalize its Acid Rain rules by November 15, 1995. The JCDH and City of Huntsville have committed to adopt Local Acid Rain regulations within 60 days after the ADEM adopts the State rules.

#### B. Proposed Actions

The EPA is proposing to grant source category-limited interim approval for the ADEM and JCDH operating permits programs, and interim approval for the City of Huntsville program. If promulgated, the State and Local agencies must make the following changes to their programs to receive full approval:

1. The State statute must be revised to provide adequate criminal authority as required by 40 CFR 70.11(a)(3)(ii)-(iii), including criminal fines recoverable in a maximum amount of not less than \$10,000 per day per violation.

2. The ADEM, JCDH, and City of Huntsville must delete ADEM Regulation 335-3-16-.04(9)(b), JCDH Regulation 18.4.9(b) and City of Huntsville Regulation 3.9.4(b), which state: "Certification for completeness shall not be required for initial applications that will not be processed in the first year the regulations in this chapter are effective." Since applications will be received from all sources by the end of the first year following program approval, and these applications will meet at least minimal requirements for a completeness determination, this regulation is not consistent with 40 CFR Part 70.

3. The ADEM, JCDH, and City of Huntsville must revise their regulations regarding insignificant activities such that (1) emissions thresholds for individual activities or units that are exempted will not exceed five tons per

year for criteria pollutants, and the lesser of 1,000 pounds per year or section 112(g) de minimis levels for HAPs, (2) their list of insignificant activities is made available for EPA and public review and comment each time the list is revised, and (3) emissions units with applicable requirements will not be exempted from title V permitting requirements or major source applicability determinations, even if listed on an approved list of insignificant activities.

4. The ADEM, JCDH, and City of Huntsville programs must be revised to provide for operational flexibility in accordance with 40 CFR 70.4(b)(12)(iii), 70.5(c)(7), and 70.6(a)(10). These rules allow the agencies, if requested by permit applicants, to issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in permitted facilities.

5. ADEM Regulation 335-3-16-.04(8)(b)(3), JCDH Regulation 18.4.8(c)(3), and City of Huntsville Regulation 3.9.3(c)(3) state that permit applications shall include "emission rates of all pollutants in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, or alternative method approved by the Department's Director." The Regulations must be revised to delete the Department Director's discretion in approving alternatives to standard reference test methods used in demonstrating compliance with title V permit terms.

6. The ADEM, JCDH, and City of Huntsville rules define significant modifications as modifications under NSPS or NESHAP. In accordance with 40 CFR 70.7(e)(4)(i), this definition must be modified to include at least every significant change in existing monitoring terms or conditions and every relaxation of reporting or recordkeeping terms or conditions as a significant modification.

7. For full approval, ADEM Regulation 335-3-16-.13(1)(a)7 (JCDH Regulation 18.13.1(a)(7) and City of Huntsville Regulation 3.9.11(a)(1)(vii)) must be revised to specifically list the types of changes that the State proposes to be eligible for processing as administrative amendments, thus obtaining the Administrator's approval of such changes as part of the State's part 70 program. Also, ADEM Regulation 335-3-16-.13(1)(a)6 must be revised to include the EPA and affected states review provisions required by 40 CFR 70.7(d)(1)(v).

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim

<sup>1</sup> The radionuclide National Emission Standards for Hazardous Air Pollutants (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the ADEM, JCDH, and City of Huntsville in the development of their radionuclide program to ensure that permits are issued in a timely manner.

approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications. The ADEM and JCDH, which have requested source category-limited interim approvals as discussed below, will have a 5-year time period in which to process initial permit applications.

The ADEM and JCDH have requested source category-limited (SCL) interim approval of their part 70 operating permits programs. Although the ADEM and JCDH would be required to issue permits within three years to all sources subject to the interim approval, some sources would not be subject to the requirement to obtain a permit until full approval is granted. Part 70 sources not addressed until full program approval is granted are also subject to a 3-year time period for processing initial permit applications. The 3-year period for these sources would begin on the date that full approval of the State or Local program is granted. Therefore, initial permitting of all part 70 sources would not be completed until five years after interim approval is granted. The City of Huntsville did not request SCL interim approval of their part 70 operating permits program, and will therefore complete initial permitting within three years of interim approval.

The ADEM and JCDH provided the reasons for needing SCL interim approval in supplemental materials submitted by the ADEM on March 18, 1994, and by the JCDH on July 10, 1995. The ADEM and JCDH have a variety of large and complex sources such as chemical manufacturing plants and pulp and paper facilities. As a result, EPA believes the ADEM and JCDH will be unable to issue permits to all part 70 sources within three years and that SCL interim approval is warranted for their title V programs. For further discussion on EPA's determination, see the Technical Support Documents accompanying this approval.

In published guidance, EPA has acknowledged that SCL interim programs that apply to at least 60 percent of all part 70 sources and that include sources responsible for at least 80 percent of the aggregate emissions from all part 70 sources substantially meet the emissions coverage requirements of part 70. The ADEM program submittal includes a schedule

for permitting 60 percent of all part 70 sources within three years of interim program approval. The ADEM has also committed to permitting part 70 sources that are responsible for a substantial percentage of the State's aggregate emissions in three years. In addition, the ADEM has committed to act on all initial permit applications by November 15, 2000. The EPA believes that the ADEM program has been skillfully designed to utilize available resources in an efficient manner and to result in effective permits that are Federally enforceable. The EPA is confident that the ADEM will address a substantial number of sources in the first three years so as to represent a significant portion of the program and, therefore, fully meets the intent of part 70 and other program guidance. The JCDH program will address 60 percent of their part 70 sources during the first three years following SCL interim approval and has also committed to permitting part 70 sources that are responsible for a substantial percentage of the Local's aggregate emissions during these three years.

The scope of the ADEM, JCDH, and City of Huntsville part 70 programs for which EPA proposes interim approval in this notice would apply to all part 70 sources (as defined in the approved program) within the State, except any sources of air pollution over which an Indian tribe has jurisdiction. See, e.g., 59 FR 55813, 55815-18 (Nov. 9, 1994). The term "Indian tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

As discussed above in section II.A.4.c., EPA also proposes to grant approval under section 112(l)(5) and 40 CFR 63.91 to the ADEM, JCDH, and City of Huntsville for receiving delegation of future section 112 standards and programs that are unchanged from Federal standards as promulgated. In addition, EPA proposes to delegate existing standards and programs under 40 CFR parts 61 and 63 for both part 70 sources and non-part 70 sources.

### **III. Administrative Requirements**

#### **A. Request for Public Comments**

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the submittals and

other information relied upon for the proposed interim approval are contained in a docket maintained at EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

- (1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and
- (2) to serve as the record in case of judicial review. The EPA will consider any comments received by October 13, 1995.

#### **B. Executive Order 12866**

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

#### **C. Regulatory Flexibility Act**

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

#### **D. Unfunded Mandates**

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, Local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the [proposed] approval action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, Local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or Local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, Local, or tribal governments, or to the private sector, result from this action.



**List of Subjects in 40 CFR Part 70**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: September 5, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 95-22723 Filed 9-12-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 81**

[WI56-01-7019b; FRL-5289-4]

**Designation of Areas for Air Quality Planning Purposes; Wisconsin**

**AGENCY:** Environmental Protection Agency (USEPA).

**ACTION:** Proposed rule.

**SUMMARY:** In this action USEPA proposes to remove all total suspended particulate (TSP) area designations in the State of Wisconsin. This action was prompted by the Wisconsin Department of Natural Resources' (WDNR) request to redesignate all areas in the State from TSP nonattainment to attainment. In the final rules section of this **Federal Register**, USEPA is approving the State's request as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed action must be received by October 13, 1995.

**ADDRESSES:** Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), USEPA Region 5, 77

West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328.

**SUPPLEMENTARY INFORMATION:** For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Christos Panos at (312) 353-8328 before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

**Authority:** 42 U.S.C. 7401-7671(q).

Dated: August 17, 1995.

**Valdas V. Adamkus,**

*Regional Administrator.*

[FR Doc. 95-22621 Filed 9-12-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 180**

[PP 4E4419/P626; FRL-4970-8]

RIN 2070-AC

**Avermectin B<sub>1</sub> and its Delta-8,9 Isomer**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to establish time-limited tolerances for the combined residues of the insecticide avermectin B<sub>1</sub> and its delta-8,9-isomer in or on the raw agricultural commodities dried hops and cattle fat. The proposed regulation to establish maximum permissible levels for residues of the insecticide was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4). The time-limited tolerances for dried hops and cattle fat would expire on April 30, 1996.

**DATES:** Comments, identified by the document control number [PP 4E4419/P626], must be received on or before October 13, 1995.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Comments and data may also be submitted to OPP by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 4E4419/P626]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the "SUPPLEMENTAL INFORMATION" section of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information." CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 4E4419 to EPA on behalf of the Idaho, Oregon, and Washington Hop Commissions, and the Hop Growers of America. This petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.449 by establishing time-limited tolerances for the combined residues of the insecticide avermectin B<sub>1</sub> [a mixture of avermectins containing greater than or equal to 80 percent avermectin B<sub>1a</sub> (5-O-demethyl avermectin A<sub>1a</sub>) and less than or equal to 20 percent avermectin B<sub>1b</sub> (5-O-demethyl-25-de(1-methylpropyl)-25-(1-